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CAG ACCEPTANCE, LLC
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19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF NEVADA**
21

22 MARY GIBBS-BOLENDER,

23 Plaintiff,

24 vs.

25 CAG ACCEPTANCE, LLC, a foreign limited
liability company; DOES I through X,
26 inclusive; and ROES 1 through 10, inclusive,

27 Defendants.
28

No.: 2:14-cv-01684-APG-GWF

**DECLARATION OF TOMMY L.
SMITH IN SUPPORT OF
DEFENDANT'S MOTION TO
DISMISS TO COMPEL
ARBITRATION, OR
ALTERNATIVELY, TO STAY
PROCEEDINGS PENDING
ARBITRATION**

1
2 I, Tommy L. Smith, state under the penalty of perjury as follows:

3 1. I am a finance manager at the Chapman Chrysler Jeep dealership located at 930
4 Auto Show Dr., Henderson, NV (the "Chapman Henderson Dealership").

5 2. I have personal knowledge of the matters set forth in this Declaration, and can
6 testify as to the matters contained herein if called upon to do so.

7 3. I have approximately 10 years of experience in the automotive retail industry.

8 4. I have been a finance manager at the Chapman Henderson Dealership since
9 January, 2013.

10 5. As a finance manager at the Chapman Henderson Dealership, I am familiar
11 with the customs, practices, procedures, and job responsibilities of finance managers at the
12 Chapman Henderson Dealership.

13 6. I specifically recall meeting with Mary Gibbs-Bolender ("Gibbs-Bolender"),
14 and I recall her having a great need for a vehicle.

15 7. On August 3, 2013, Gibbs-Bolender executed a Simple Interest Vehicle
16 Contract and Security Agreement (the "August 3rd RISC") with the Chapman Henderson
17 Dealership for the purchase of a 2008 Dodge Caravan. A true and correct copy of the first
18 two pages of the August 3rd RISC is attached hereto as **Exhibit "1."**

19 8. At the time Gibbs-Bolender agreed to purchase the 2008 Dodge Caravan,
20 Gibbs-Bolender signed a Waiver of Purchaser's Right to Sue Arbitration Agreement (the
21 "August 3rd Arbitration Agreement"). A true and correct copy of the August 3rd Arbitration
22 Agreement is attached hereto as **Exhibit "2."**

23 9. My signature is contained on the August 3rd Arbitration Agreement.

24 10. Because financing was not completed, the agreement to purchase the 2008
25 Dodge Caravan fell through shortly after August 3, 2014.

26 11. Contracts are often executed with automotive dealers pending the completion
27 of financing.

28 12. If financing is not completed, which can occur for a variety of different

1 reasons, the purchase of the vehicle cannot be finalized despite a contract being executed.

2 13. After the deal for the 2008 Dodge Caravan fell through, and because she
3 needed a vehicle, Gibbs-Bolender executed a Simple Interest Vehicle Contract and Security
4 Agreement (the "August 13th RISC") for a 2005 Chrysler Town & Country. A true and
5 correct copy of the first two pages of the August 13th RISC is attached hereto as **Exhibit**
6 **"3."**

7 14. At the time Gibbs-Bolender agreed to purchase the 2005 Chrysler Town &
8 Country, Gibbs-Bolender executed a second Waiver of Purchaser's Right to Sue Arbitration
9 Agreement (the "August 13th Arbitration Agreement"). A true and correct copy of the
10 August 13th Arbitration Agreement is attached hereto as **Exhibit "4."**

11 15. In order to enable Gibbs-Bolender to obtain financing, Gibbs-Bolender
12 executed an Addendum to the August 13th RISC. A true and correct copy of the Addendum
13 is attached hereto as **Exhibit "5."**

14 16. The Addendum permitted the Chapman Henderson Dealership to install a
15 PassTime GPS device on the 2005 Town & Country. The Addendum also contained an
16 arbitration provision.

17 17. The PassTime GPS device was installed on Gibbs-Bolender's vehicle on
18 August 13, 2014, which was the same day she signed the August 13th RISC and August 13th
19 Arbitration Agreement.

20 18. Gibbs-Bolender was issued a temporary license plate on August 13th, 2013,
21 signifying that Gibbs-Bolender actually drove the car off of the lot on August 13, 2013.

22 19. Due to timing issues involved with financing, Gibbs-Bolender was required to
23 return to the dealership and sign a third Simple Interest Vehicle Contract and Security
24 Agreement (the "September 6th RISC"). A true and correct copy of the September 6th
25 RISC is attached hereto as **Exhibit "6."**

26 20. As with the prior two RISC's, Gibbs-Bolender executed a third Waiver of
27 Purchaser's Right to Sue Arbitration Agreement (the "September 6th Arbitration
28 Agreement"). A true and correct copy of the September 6th Arbitration Agreement is

1 attached hereto as **Exhibit "7."**

2 21. My signature is contained on the September 6th Arbitration Agreement.

3 22. Shortly after the September 6th RISC and September 6th Arbitration
4 Agreements were executed, the Chapman Henderson Dealership assigned the Gibbs-
5 Bolender contract to CAG Acceptance, LLC, which provided financing for the 2005
6 Chrysler Town & Country purchased by Gibbs-Bolender.

7 23. The information contained in the exhibits attached hereto were made at or near
8 the time of the act or event concerning which the information was recorded, by or from
9 information transmitted by a person with knowledge of the act or event, and were made, and
10 are kept and maintained, in the regular conduct of business.

11
12
13 DATED 10/21/14

14 By: 

TOMMY L. SMITH